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A Mandate Attains Independence*

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# The State of Iraq: A Mandate Attains Independence

by

WILBUR LAURENT WILLIAMS

with the aid of the Research Staff of the Foreign Policy Association

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## INTRODUCTION

WITH the admission of Iraq to the League of Nations on October 3, 1932 the mandatory control exercised by Great Britain over this territory since the World War comes to an end. This event fulfills the hopes of those who believed that under the League of Nations' mandates system a dependent people could achieve independence by peaceful and orderly means. Furthermore, the example of the emancipation of Iraq may influence the future of neighboring mandated territories,<sup>1</sup> as well as peoples under colonial rule.

Nevertheless, Iraq has entered the League of Nations subject to the terms of an alliance and financial agreement with Great Britain. Critics, some of whom apparently include members of the Permanent Mandates Commission, fear that these fetters upon Iraq may actually make it a "puppet" state, and they ask whether it is in accordance with the spirit of the League Covenant to admit to League membership a state which may, in reality, be under the control of a great power.<sup>1a</sup> It is true that a number of such

states already belong to the League, notably Albania, which has special ties with Italy, and Cuba and Panama, whose independence is limited by treaties with the United States.<sup>2</sup>

Although the League had no direct control over the status of these states in the present case it is directly responsible for bringing the state of Iraq into existence. In view of the manifest dangers of "puppet" states, such as, notably, the newly established state of Manchoukuo,<sup>2a</sup> it is asked whether the League is justified in admitting Iraq when its full independence is still sub-

1a. Cf. *Idem, Minutes of the Twenty-first Session*; A. Blondel, "La cessation des mandats et le cas de l'Iraq," *Revue Générale de Droit International Public* (Paris, A. Pedone), September-October 1932, p. 614-615.

In his conclusion M. Blondel declares: "It is to be regretted that Great Britain has reserved to itself rights which are truly excessive. For excuse Great Britain may urge its fear of a rising nationalism, which may be carried to a climax by independence; the extent of Iraq's territory and the semi-necessity of retaining British troops to defend Iraq's integrity; and the importance of Iraq as a normal passage way on the air route to India—a position likely to assume greater importance with the growth of commercial aviation and, perhaps, with the necessity of being quickly to defend the Indian empire itself by the air."

2. Cf. Eugene Staley, "Italy's Financial Stake in Albania," *Foreign Policy Reports*, Vol. VIII, No. 7, June 8, 1932; Raymond Leslie Buell, "Panama and the United States," *idem*, Vol. VII, No. 23, January 20, 1932, and Buell, "Cuba and the Platt Amendment," *Foreign Policy Association Information Service*, Vol. V, No. 3, April 17, 1929.

2a. Cf. T. A. Bisson, "Japan and Manchoukuo," *Foreign Policy Reports*, Vol. VIII, No. 8, June 22, 1932.

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ordinated to Great Britain. While admitting that Iraq may need foreign advisers during a transitory period, League supporters assert that such advisers should be supplied by the League rather than by the British government. Presumably these observers would favor an arrangement regarding foreign advisers such as the Lytton Commission has suggested for Manchuria.<sup>3</sup> In reply it is pointed out that the League Council has exacted guarantees which will prevent Great Britain from abusing its position in Iraq, that any disputes between the two countries may be appealed to the League, and finally that the cases of Iraq and Manchoukuo are dissimilar in important respects.

#### ANGLO-IRAQI TREATY, 1922, REPLACES PROPOSED MANDATE

A previous report<sup>1</sup> describes how Great Britain established control over Iraq during the World War. After the war the Allies decided that Iraq should become a Class A mandate in accordance with Article XXII of the League Covenant, which declared that "certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognized subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone." In April 1920 the Supreme Allied Council issued the Iraq mandate to Great Britain.

Iraq, however, refused to accept the status of a mandated territory. Instead, in October 1922, it placed its relationship with Great Britain on an alliance basis—the only case where a mandated territory gave treaty consent to a mandatory régime. While the treaty, and in particular certain supplementary agreements, defined a degree of British control similar to that proposed in the rejected mandate,<sup>2</sup> the treaty included a pledge by the British government to secure Iraq's admission to the League of Nations "as soon as possible."

Nevertheless, Iraq did not accept the treaty and subsidiary agreements until June 1924.<sup>3</sup> Meanwhile it had secured a protocol in 1923 reducing the period of the alliance from twenty years to four years after the ratification of peace with Turkey, and providing that the alliance should be ended when Iraq became a member of the League. In

September 1924 the League Council accepted these agreements as an adequate substitute for the mandate and Great Britain formally undertook responsibility for the fulfillment of their provisions by Iraq.<sup>4</sup>

Although by the terms of the alliance Iraq was under the nominal rule of King Faisal, the King and his council were subject to the control of a British High Commissioner, while British advisers were present in most departments—in particular dominating the military, judicial and financial administration.<sup>5</sup> Down to the latter part of 1929 the Iraqi government expressed growing dissatisfaction with the continuance of British control despite the fact that this control was constantly lessening<sup>6</sup> and despite the promise which the British government made in 1927 that it would propose League membership for Iraq in 1932 "provided . . . all goes well in the interval." In September 1929, acting upon the urgent advice of its High Commissioner at Baghdad, the Labour government in Great Britain assured King Faisal that "without qualification or proviso" it would support Iraq's candidature for League membership in 1932. On November 4, 1929 effect was given to this promise in a communication from the British government to the Secretary-General of the League.

#### GREAT BRITAIN'S DECISION TO END THE 1922 TREATY

There were two leading reasons for the willingness of the British government to relinquish the responsibility which it had exercised in Iraq since 1922. First was the strength of Iraqi nationalism, which demanded the withdrawal of foreign control; second were considerations of imperial policy.<sup>7</sup> The occupation of Iraq imposed a heavy burden on the British budget; "the relatively large size of the country, its extensive frontiers which would be difficult to defend, and the proximity of aspiring and warlike states, suggested to Great Britain the undesirability of assuming too strict a responsibility for Iraq and undertaking the considerable expense of its military occupation and subjection."<sup>8</sup>

Apparently Great Britain believed that its

4. League of Nations, *Minutes of the Thirtieth Session of the Council*, p. 1346-7.

5. *Progress of Iraq*, cited, p. 20-31.

6. *Ibid.*, p. 25.

7. Permanent Mandates Commission, *Minutes of the Nineteenth Session* (November 1930), p. 86 *et seq.*

8. Hans Kohn, *Nationalism and Imperialism in the Hither East* (New York, Harcourt, Brace, 1932), p. 121. The cost of maintaining military forces in Iraq from 1921 to 1928 has been placed at approximately \$236,000,000. (MacCallum, "Iraq and the British Treaties," cited, p. 241.) In addition, it was revealed in 1931 that Great Britain had remitted to Iraq in full approximately \$13,000,000 spent on public works and administration and had accepted slightly more than \$12,000,000 in full payment for other public works turned over to the Iraqi government on which it placed its expenditure at nearly \$140,000,000. (Permanent Mandates Commission, *Minutes of the Twenty-first Session*, p. 103-105.)

3. Cf. "The Lytton Report," *Foreign Policy Bulletin*, Vol. XI, No. 49, October 7, 1932.

1. Elizabeth P. MacCallum, "Iraq and the British Treaties," *Foreign Policy Association, Information Service*, Vol. VI, No. 12, August 20, 1930.

2. Great Britain, Foreign Office, *Progress of Iraq during the period 1920-1931* (London, H. M. Stationery Office, 1931), p. 15. (Hereinafter cited as *Progress of Iraq*.)

3. Ratifications were not exchanged until December 1924.

strategic interests in the Near East could be protected even though Iraq became an independent state by joining the League of Nations. For the purpose of protecting these interests Great Britain signed a new treaty of alliance with Iraq in June 1930 which was to come into effect when the latter joined the League and was to remain in force for twenty-five years. By its terms the Iraqi government agreed that for the maintenance and protection of "essential communications" the British government could occupy certain air bases and maintain certain forces

on Iraq territory for the full term of the treaty.<sup>9</sup> None of the provisions of the treaty was to prejudice the obligations of either power under the League Covenant, however, and differences which could not be settled by negotiation were to be dealt with in accordance with the provisions of the Covenant. Subsequently financial and judicial agreements were concluded. The former was incorporated with the treaty of alliance;<sup>10</sup> the latter, signed on March 4 1931, was to expire with Iraq's admission to the League.<sup>11</sup>

### THE LEAGUE'S CONDITIONS FOR ENDING A MANDATE

With the British decision to propose full independence for Iraq, the League was confronted for the first time with the question of determining the conditions under which a mandatory régime could be ended and of deciding whether Iraq could meet these conditions as well as the qualifications for League membership.

On January 13, 1930 the League Council responded to the British decision to liberate Iraq by requesting the Permanent Mandates Commission to formulate for its guidance the general conditions on which a mandate might be terminated.<sup>12</sup> At its twentieth session, in June 1931, the Commission formulated these conditions. Emancipation of a territory under mandate, it declared, should be made dependent on the existence of conditions in the territory which would satisfy the presumption that the country had reached a stage of development where it was capable, in the words of Article 22 of the Covenant, "to stand by itself," and on the furnishing of certain guarantees to the League of Nations "in whose name the mandate was conferred and has been exercised by the Mandatory."<sup>13</sup>

During the year and a half between the Council resolution of January 13, 1930 and the formulation of these conditions, the Mandates Commission debated such questions as whether or not a mandate could be terminated and where authority was vested for pronouncing termination. The Commission debates brought about unanimous agreement that under the terms of Article XXII of the Covenant mandates were temporary in nature.<sup>14</sup> In addition, the debates raised the

vital point as to where the initiative reposed for proposing termination of a mandate.<sup>15</sup> This later question was not answered definitively, but apparently it was the consensus of opinion that competence to declare a mandate at an end rested with the League Council, while the initiative for proposing such action would normally rest with the mandatory power. It was suggested, however, that since the mandatory system presumed eventual independence, in theory a mandated territory should automatically acquire liberation when a required standard was reached. Lord Lugard, who advanced this last view, felt obliged to add, however, that "for all practical purposes, the Council would never take action except at the request of the Mandatory."<sup>16</sup>

### TESTS OF INDEPENDENCE AND GUARANTEES

The general conditions promulgated by the Mandates Commission for the termination of a mandate, and subsequently accepted by the Council in a resolution of September 4, 1931,<sup>17</sup> will apply to all mandated territories and will presumably form the basis for the later examination of other mandated states, such as Syria and the Lebanon, now under French mandate.

Whether a people was capable of standing alone, the Mandates Commission declared, was "a question of fact and not of principle," and could only be settled by "careful observation of the political, social and economic development of each territory." For guidance in making this observation, the Commission suggested that satisfaction of certain specific conditions might be demanded. To secure

9. Great Britain, Foreign Office, *Treaty of Alliance between the United Kingdom and Iraq, together with notes embodying a separate Financial Agreement* (London, H. M. Stationery Office, 1931), Cmd. 3797. Ratifications were exchanged on January 26, 1931.

10. *Ibid.*

11. *Idem, Judicial Agreement between . . . the United Kingdom and Iraq* (London, H. M. Stationery Office, 1931), Cmd. 3933. Ratifications were exchanged on May 29, 1931.

12. League of Nations, *Minutes of the Fifty-eighth Session of the Council*, p. 77. Preliminary discussion of the British proposal had taken place at the sixteenth session of the Mandates Commission, which opened on November 6, 1929.

13. Permanent Mandates Commission, *Minutes of the Twentieth Session*, C.422.M.176.1931.VI, p. 228-229.

14. Cf. p. 185.

15. Cf. a special memorandum on this question by M. Van Rees, Vice-Chairman of the Mandates Commission, Permanent Mandates Commission, *Minutes of the Twentieth Session*, p. 195-201.

16. *Ibid.*, p. 201-203. Lord Lugard's memorandum was largely an answer to M. Van Rees and pointed out that the request of the Council for an opinion on the conditions of ended a mandate implied that a mandate could be ended and that the Council had competence to end it.

17. League of Nations, *Minutes of the Sixty-fourth Session of the Council*, p. 2055.

release from a mandate, it said, a state must:<sup>18</sup>

- a. have a settled government and an administration capable of maintaining the regular operation of essential governmental services;
- b. be capable of maintaining its territorial integrity and political independence;
- c. be able to maintain internal peace and order;
- d. have at its disposal adequate financial resources to provide regularly for normal governmental requirements;
- e. possess laws and a judicial organization which will afford equal and regular justice to all.

Finally, the Commission suggested that before termination of the mandate a new

state should guarantee the protection of minorities, the judicial rights of foreigners, freedom of conscience and worship and the free exercise of missions. It should also maintain the financial obligations assumed by the former mandatory, recognize the rights of every kind legally acquired under the mandatory régime and fulfill all international conventions to which it was party. In addition, the Commission recommended that a new state should secure to all states members of the League the most-favored-nation treatment as a transitory measure and subject to reciprocity.

### THE EXAMINATION OF IRAQ

Having laid down these general conditions the Commission then turned, at its twenty-first session in October-November 1931, to the consideration of whether, in the light of these conditions, the proposal of the British government for the emancipation of Iraq should be granted. This involved both examination of *de facto* conditions in Iraq and the elaboration of the guarantees which Iraq should furnish the League. In addition, at the specific request of the Council,<sup>19</sup> the Commission examined the Anglo-Iraqi treaty of alliance of 1930 to determine whether its terms were compatible with Iraq's independence.

#### INTERNAL CONDITIONS

Its examination of conditions in Iraq, the Commission decided at the outset,<sup>20</sup> must be based on the reports of the mandatory power to the Council. These reports had been made annually since 1920, and for the convenience of the Commission the British Colonial Office had submitted a special report.<sup>21</sup> A proposal that the eleven members of the Commission visit Iraq was abandoned; it was pointed out that no funds existed to finance such an investigation, and that, in any case, no first-hand contact of necessarily short duration could yield information comparable to that available in the reports of the mandatory power and through personal examination of its agents before the Commission. Several members of the Commission argued, however, that since their information could be drawn only from such sources, they should limit themselves to declaring that they could see no reason "to oppose the statement of the British government as to the maturity of Iraq," and should not make a declaration that they regarded Iraq as able to stand by itself.<sup>22</sup>

18. Permanent Mandates Commission, *Minutes of the Twentieth Session*, cited, p. 228-229.

19. Council resolution of September 4, 1931, *Minutes of the Sixty-fourth Session of the Council*, p. 2056.

20. Permanent Mandates Commission, *Minutes of the Twenty-first Session*, p. 57 *et seq.*

21. *Progress of Iraq*, cited.

#### Conclusions of the Mandates Commission

Finally, however, the Commission decided to point out to the Council that it had had no opportunity of observing conditions in Iraq at first-hand and to call the Council's attention to the statement made before it in its June 1931 session by Sir Francis Humphrys, High Commissioner for Iraq, that

"His Majesty's Government fully realizes its responsibility in recommending that Iraq should be admitted to the League, which is, in its view, the only legal way of terminating the mandate. Should Iraq . . . prove unworthy of the confidence which has been placed in her, the moral responsibility must rest with His Majesty's Government."<sup>23</sup>

"Had it not been for this declaration," the Commission concluded, "the Commission would, for its part, have been unable to contemplate the termination of a régime which appeared some years ago to be necessary in the interest of all sections of the population."<sup>24</sup>

No more definite general conclusion than this was presented. Furthermore, the opinions which the Commission expressed in a detailed discussion of Iraq's satisfaction of the five tests of its capacity for independence were similarly hedged about by qualification. In reaching these opinions, the Commission said it had been guided by the statement of the British government that it had "never regarded the attainment of an ideal standard of administrative efficiency as a necessary condition either of the termination of the mandatory régime or of the admission of Iraq to membership of the League of Nations."<sup>25</sup> "The views of the British Government as to the political maturity of Iraq," the Commission observed, "are the views of the guide who has constantly seen and directed the rapid progress made by that country during the mandatory régime."<sup>26</sup>

22. Permanent Mandates Commission, *Minutes of the Twenty-first Session*, p. 57 *et seq.*

23. *Idem, Minutes of the Twentieth Session*, p. 134.

24. *Idem, Minutes of the Twenty-first Session*, p. 222.

25. *Progress of Iraq*, cited, p. 10-11.

26. Permanent Mandates Commission, *Minutes of the Twenty-first Session*, p. 221.

That Iraq had a settled government and an administration capable of maintaining the regular operation of government services was "an assumption" which may be accepted, "as the Commission has no information which would justify a contrary opinion." Iraq, the Commission found, did not possess a military establishment capable of maintaining its territorial integrity and political independence, but in view of the fact that if emancipated it would have the protection both of League membership and of the Anglo-Iraqi alliance, the Commission declared that it fulfilled the second condition "in the sense attached to it by the Commission itself." Regarding Iraq's ability to maintain public peace throughout its territory, the Commission declared that it accepted the judgment of Great Britain, "having no information to the contrary." No opinion was expressed on the financial system of Iraq, since the Commission found that "its credit has not yet been tested" and "its national currency has not yet been put in circulation." The Commission observed, however, that its existing financial situation was "undoubtedly sound" and its resources "considerable" and that "it found nothing in the information supplied by the mandatory Power" which would cause it to doubt Iraq's ability to provide regularly for normal governmental requirements. Finally, the Commission gave the opinion that "Iraq possesses laws and a judicial organization which, subject to certain readjustment and improvements . . . will afford uniform justice to all."<sup>27</sup>

Thus, the question of whether internal conditions in Iraq justified the presumption that the country was prepared for independence was really disposed of by the Commission's hesitant acceptance of Great Britain's assurances to this effect. In other words, the Commission seemed reluctant to liberate this particular mandate. One reason may have been, as was suggested soon after the emancipation of Iraq was proposed, that a majority of the members of the Commission really felt that the British proposal was motivated by considerations of British policy rather than by Iraqi fitness for independence.<sup>28</sup> Political considerations, in particular the question of the possible repercussions of Iraqi liberation on the French mandated territory of Syria and the Lebanon, may also have played a part.<sup>29</sup> In relying exclusively

27. *Ibid.*, p. 222-223. Judicial organization was made the subject of one of the guarantees required from Iraq. Cf. p. . . . .

28. Permanent Mandates Commission, *Minutes of the Nineteenth Session*, p. 86 et seq. Cf. also p. 185.

29. William Martin, "L'Iraq à Genève," *Journal de Genève*, November 11, 1930; Permanent Mandates Commission, *Minutes of the Nineteenth Session*, cited. Announcement was made at Baghdad on August 30, 1932 that a Pan-Arab conference would be held at the Iraqi capital this autumn at which delegates from Iraq, Syria, Palestine, Egypt, Transjordan and the Hedjaz would be present, and that this conference, under the presidency of King Faisal, would particularly discuss a "projected union of Iraq and Syria." *New York Times*, August 31, 1932.

upon printed reports and verbal information from the mandatory power and its agents and in apparently concluding that a mandate could normally be terminated only at the request of the mandatory power, the members of the Commission implied that the mandatory power was to have a predominant influence in determining whether or not a mandate should come to an end. Nevertheless, any mandated state has the right of petitioning the League Council and presumably this right includes that of requesting that the mandatory régime to which it is subjected be terminated.<sup>30</sup> The question, however, of whether the League Council may terminate a mandate without the consent of the mandatory power remains unanswered.

#### IRAQ'S GUARANTEES TO THE LEAGUE

As part of the conditions of its emancipation from the mandatory régime, the Mandates Commission considered that in addition to satisfying certain tests of its capacity for full self-government, Iraq must also be prepared to offer the League guarantees on certain matters of international concern.<sup>31</sup> In accord with the recommendations of the Commission,<sup>32</sup> the League Council appointed a special committee<sup>33</sup> to draft a formal declaration of guarantees, which Iraq accepted in May 1932. Of the guarantees required by the Council, those to which the Mandates Commission had directed its principal attention were minorities, judicial administration and the concession of the most-favored-nation treatment to states members of the League, subject to reciprocity.

#### Minorities

The Kurds and the Assyrians are the chief political minorities in Iraq.<sup>34</sup> The Kurds number nearly 500,000 in a population of approximately 2,850,000,<sup>35</sup> while the Assyrians in Iraq are placed at 66,000.<sup>36</sup>

With the publication of the Anglo-Iraqi treaty of alliance both Kurds and Assyrians were dismayed to find that no provision was made for the maintenance of the privileges

30. Quincy Wright, *Mandates under the League of Nations* (Chicago, University of Chicago Press, 1930), p. 532.

31. Cf. p. 187.

32. Permanent Mandates Commission, *Minutes of the Twenty-first Session*, cited, p. 223-224.

33. Provision was made for consultation between this committee and the Iraqi Premier. League of Nations, *Minutes of the Sixty-sixth Session of the Council (Part II)*, p. 474.

34. *Progress of Iraq*, cited, p. 252-279. Other minority groups include the Jews (87,500), the Turks (60,000), and the Yezidis (25,000). (*Ibid.*, p. 279-282.)

35. The Kurdish problem revolves largely around the fact that by the abortive Treaty of Sèvres of August 1920, between Turkey and the Allied Powers, the Kurds, with the exception of those in Persia, were to have been given an autonomous status, presumably under a Class A mandate. Temporarily most of the Kurds were included in Iraq, however, and after the Treaty of Lausanne (1923), which took the place of the rejected Sèvres agreement, and the settlement of the Mosul question in 1925, the Kurds were incorporated in Iraq under certain administrative guarantees. *Progress of Iraq*, cited, p. 251-266; Kohn, *Nationalism and Imperialism in the Hither East*, cited, p. 225-230; MacCallum, "The Near East: A Survey of Political Trends in 1925," Foreign Policy Association, *Information Service*, Supplement No. 1, March, 1926.

36. *Progress of Iraq*, cited, p. 266-279.

they had been granted. The Kurds recalled, furthermore, that in 1925, when they had been definitely incorporated in Iraq, the League Council, at the suggestion of its Frontiers Commission, had made one of the conditions of their incorporation the continuance of the mandatory régime for twenty-five years—a condition which occasioned a new Anglo-Iraqi treaty in 1926.<sup>37</sup>

Petitions from both communities were promptly addressed to the League. The British government explained to the League Council and the Mandates Commission that the treaty of alliance of 1930 did not mention minorities because this was considered out of place in such a treaty; they suggested, however, that the question might well be dealt with by international action. The League accepted this view. The emphasis which it placed on the giving of guarantees by Iraq regarding minorities, moreover, indicated the seriousness with which it regarded the question.

Of the sixteen articles in the declaration assented to by the Iraq government in May 1932, ten deal with minorities. These articles, which were drafted in consultation with Nuri Pasha, the Iraqi Premier, are based on the terms of a similar declaration which Albania was required to give before it was admitted to the League of Nations, but include some additional guarantees. In making public the text of the articles, the League committee expressed satisfaction that many of the "constitutional and legal provisions of Iraq are based on a very liberal conception of the rights to be accorded to racial, linguistic and religious minorities," and specifically noted, with approval, the "formal declaration of the Iraqi government to pursue the liberal policy already applied in relation to the Kurdish population."<sup>38</sup>

The minority articles stipulate that their provisions shall be recognized as part of the fundamental law of Iraq. To carry out these provisions, it is required that the electoral system shall guarantee equitable representation to racial, religious or linguistic minorities and that all Iraqi nationals shall be admitted to "public enjoyments, functions and honours" and to the exercise of professions or industries.<sup>39</sup>

Provision is made for the free use by Iraqi nationals of any language in commerce, religion, the press, public meetings and publi-

cations, and special provision is made that in specified districts Kurdish or Turkish shall be the official language jointly with Arabic. Furthermore, in sections where non-Arab nationals predominate, or reside in considerable numbers, the Iraqi government is pledged to grant adequate facilities and an equitable share of public funds for instruction in some language other than Arabic, although it may make the study of Arabic compulsory.

Finally, these provisions are declared to constitute international obligations under the guarantee of the League Council.<sup>40</sup> Any difference regarding law or fact between Iraq and any state represented on the League Council is to come before the Permanent Court of International Justice, whose decision is final.

#### Foreign Interests and the Judicial System

In addition to minority guarantees, the Mandates Commission recommended to the League Council that Iraq be required to give a guarantee safeguarding the interests of foreigners in judicial matters. The Commission suggested, moreover, that this guarantee assume the form of a declaration by the new state that it would continue in force, for a period of ten years after admission to the League, the judicial system set up by the March 4, 1931 agreement with Great Britain—an agreement which otherwise would have expired when Iraq became a member of the League.<sup>41</sup>

In the absence of some such procedure it was assumed that with the termination of the British alliance of 1922 the pre-war system of capitulations, or extraterritoriality, would be restored.<sup>42</sup> The Commission desired to avoid reversion to the capitulations, however, both because it considered that this would be derogatory to Iraqi independence and because it would not serve to define the rights of nationals of the many states which had come into existence as a result of the World War which had not been beneficiaries of the system of capitulations. To protect

40. While the Mandates Commission recommended that Iraq accept the rules of procedure laid down by the Council with regard to petitions from minorities, the right of minorities to petition the Council is not specifically included in the Iraqi declaration of May 1932. It is noted, however, in the League committee report that "it is understood that Iraq accepts the rules of procedure adopted by the Council in regard to the protection of minorities." League document, C.440.1932.VI, cited in League of Nations, *Minutes of the Sixty-seventh Session of the Council*, p. 1344.

41. Cf. p. 186. This was subsequently done.

42. In accepting the Anglo-Iraqi alliance of 1922 as an adequate substitute for the rejected mandate, the League Council in 1924, with the assent of the nations which had possessed rights under the capitulations, agreed that the capitulations should be set aside so long as the alliance was in force. (League of Nations, *Minutes of the Thirtieth Session of the Council*, p. 1346-7.) Hence the Mandates Commission and Council presumed that legally the capitulations would be restored with the termination of the mandatory régime unless some other arrangement were made. (Permanent Mandates Commission, *Minutes of the Twenty-first Session*, p. 69; League of Nations, *Minutes of the Sixty-seventh Session of the Council*, p. 1212-3.)

37. While this treaty increased the duration of the 1922 treaty (cf. p. 185). To twenty-five years from 1925, it contained a counter-promise by the British government to examine Iraq's fitness for League membership every four years, beginning in 1928. (MacCallum, "Iraq and the British Treaties," cited, p. 237.)

38. Cf. League of Nations document, C.444.1932.VI.

39. In the statement issued by the League committee it was announced that while the majority of officials in Kurdish districts would continue to be Kurds, knowledge of the language used in any district rather than race would be the basis of the employment of all administrative officers—a provision which, the committee pointed out, would enable qualified Kurds to hold administrative posts all over Iraq.

the rights of these foreigners, the Commission considered that guarantees would be necessary in any case, and it hoped that some form of guarantee might be found which would be satisfactory to all foreign states, and would not involve a restoration of the capitulations régime.<sup>43</sup>

The Anglo-Iraqi judicial agreement recognized that "special measures to safeguard foreigners are no longer required" in Iraq and provided for the establishment of "a uniform system of justice" to be applicable to foreigners and Iraqis alike. It provided, however, for the appointment of nine British legal experts by the Iraqi government, with the concurrence of the British government, on ten-year contracts—thus establishing British participation in Iraq's judicial system after termination of the mandatory régime. From these experts were to be drawn a judicial adviser and an assistant adviser, the president of the Court of Appeals and Cassation, and the presidents of the Courts of First Appeal at Baghdad, Basrah, Mosul and "such other places as may hereafter be agreed upon."<sup>44</sup>

Under the circumstances, no question was raised as to the effect of these provisions on the independence of Iraq, but the Mandates Commission directed criticism at the assumption that all these officials should be British subjects, especially since some were still to be appointed. As a result, with the approval of the British government,<sup>45</sup> Iraq agreed that the holders of the posts specified by the Anglo-Iraqi judicial agreement should be "selected without distinction of nationality."<sup>46</sup>

#### Most-Favored-Nation Treatment

A third matter on which the League wished assurances was that Great Britain would not establish any position of economic predominance in Iraq following its independence. Since Iraq has been subject to the "economic equality" provision applicable to

43. In its resolution accepting the declaration to be required of Iraq, the League Council recommended that the states which had enjoyed rights under the capitulations should renounce these rights before the admission of Iraq to the League. (League of Nations, *Minutes of the Sixty-seventh Session of the Council*, p. 1213.) The states which formerly benefited by capitulations (excluding Germany, Austria and Hungary, whose rights were terminated by the peace treaties) were: Great Britain, France, Spain, Portugal, Italy, Greece, Rumania, Belgium, Holland, Denmark, Sweden, Norway and the United States. With the exception of the United States all of these states have presumably renounced their rights.

The United States, by a tri-partite agreement with Great Britain and Iraq on January 9, 1930, secured equal treatment with League members in all matters affecting its trade or nationals. Ratification was proclaimed by President Hoover on March 11, 1931. U. S. Department of State, *Convention and protocol between the U. S. A., Great Britain and Iraq, Treaty Series*, No. 835 (Washington, Government Printing Office, 1931), Arts. 6 and 7.

44. Judicial agreement, cited, Article 2.

45. Permanent Mandates Commission, *Minutes of the Twenty-first Session*, p. 109-110.

46. Declaration . . . containing Guarantees given to the Council by the Iraqi Government, League of Nations document A.17.1932.VII., Article 12. It was further stipulated that fitness should be the first qualification of any appointed and that a knowledge of Arabic was indispensable; this last provision, it was recognized, would probably limit appointments to British subjects.

all Class A and B mandates the Mandates Commission suggested in its first report to the Council<sup>47</sup> that on entering the League it would be desirable for Iraq to grant to all states members of the League most-favored-nation treatment, subject to reciprocity and as a transitory measure.

In the opinion of some members of the League Council—particularly M. Grandi, Italian Foreign Minister, whose state was interested in the development of Near Eastern trade—the undertakings given Great Britain by Iraq should be examined and the recommendation of the Mandates Commission translated into an absolutely binding requirement; "reciprocity and the open door," the Italian Foreign Minister declared, were the two bases upon which new states should establish their economic independence.<sup>48</sup>

Partly carrying out M. Grandi's suggestion, a Council resolution of September 4, 1931 requested the Mandates Commission to examine the undertakings given Great Britain by Iraq.<sup>49</sup> This examination revealed that there were no provisions relating to economic, commercial or industrial relations in the 1930 treaty. Furthermore, Sir Francis Humphrys declared that his government did not intend to negotiate a commercial agreement with Iraq until after termination of the mandatory régime.<sup>50</sup> M. Grandi's further recommendation of the kind of guarantee Iraq should give the League was approved by the Council in January 1932.<sup>51</sup>

The question then arose of how long Iraq should be required to place its relations with states members of the League on a reciprocal most-favored-nation basis. Sir Francis Humphrys, speaking before the Mandates Commission,<sup>52</sup> and Lord Cecil, before the League Council,<sup>53</sup> declared that both their government and Iraq considered two years as the maximum period for which such a régime should be enforced; in their view, this régime if longer extended would constitute an infringement by the League on Iraq's sovereignty. Furthermore, Sir Francis Humphrys emphasized the fact that during the life of the most-favored-nation clause Iraq would be unable to bargain advantageously with other states.<sup>54</sup>

47. Cf. p. 187.

48. League of Nations, *Minutes of the Sixty-fourth Session of the Council*, p. 2049-2050.

49. *Ibid.*, p. 2055.

50. Permanent Mandates Commission, *Minutes of the Twenty-first Session*, p. 118-119.

51. League of Nations, *Minutes of the Sixty-sixth Session of the Council*, (Part II), p. 474.

52. Permanent Mandates Commission, *Minutes of the Twenty-first Session*, p. 119.

53. League of Nations, *Minutes of the Sixty-sixth Session of the Council* (Part II), p. 476.

54. The importance of this factor he stressed by citing that Australia had recently increased by 100 per cent its duty on dates—one of Iraq's two principal exports. At as early a date as possible, Sir Francis suggested, Iraq should be free to negotiate with Australia for a lowering of this tariff. (Permanent Mandates Commission, *Minutes of the Twenty-first Session*, p. 119.)

By the terms of the declaration drafted by the Council committee, Iraq grants most-favored-nation treatment in commercial matters, subject to reciprocity, to members of the League for a period of ten years after securing League membership.<sup>54a</sup> Provision is made, however, that should any measure be taken by a League member to the detriment of Iraq the latter may demand negotiations and failing their success within three months, Iraq is to be freed from its special obligations toward the offending state.<sup>55</sup> Furthermore, the most-favored-nation clause is not to apply to any trade advantages now given, or to be given, to facilitate frontier traffic or trade with adjoining countries or countries formerly part of the Ottoman Empire in Asia. Finally, the most-favored-nation clause is not to apply "to any advantages . . . resulting from a Customs union concluded by Iraq."

#### Miscellaneous Guarantees

The remaining guarantees given the League by Iraq pledge the new state to honor all international conventions to which it has become a party, either by its own action or by that of the mandatory power; to respect all acquired rights and financial obligations contracted during the mandatory régime;<sup>56</sup> and to insure, subject to public order and morality, freedom of conscience and worship to religious missions of all denominations and nationalities.

A final guarantee makes the provisions of the declaration obligations of an international character and provides that they shall not be modified without the consent of a majority of the League Council, and that infractions may be brought to the attention of the Council by any member of the League. If a difference of opinion arises between Iraq and any member of the Council regarding the interpretation or execution of any provision, it shall, at the demand of the Council member, be submitted for decision to the Permanent Court of International Justice. This last provision seems somewhat ambiguous in that it does not clearly indicate whether Iraq would be entitled to bring a dispute before the Court on its own initiative.<sup>57</sup>

#### IRAQ'S COMMITMENTS IN THE ANGLO-IRAQI TREATY, 1930

The second major question with which the Mandates Commission dealt at its twenty-first session in October-November 1931 was whether the continuing control which would

54a. The United States is assured similar treatment by a tri-partite agreement of January 9, 1930. Cf. footnote 43, p. 190.  
55. *Declaration of the Iraqi Government*, cited, Article 11. By the final article of the declaration all disputes over interpretation or execution of its provisions are to come before the Permanent Court or the Council.

56. This protects existing British concessions in Iraq.  
57. Since Iraq would be entitled to a seat on the League Council in any dispute in which it was concerned, according to Art. 4, paragraph 6 of the Covenant, possibly the right of appeal to the Permanent Court would be secured to it.

be exercised in Iraq by Great Britain under the terms of the Anglo-Iraqi treaty of alliance of 1930 and a subsequent financial agreement, was compatible with Iraq's proposed status as an independent state.<sup>58</sup>

#### Military Clauses

The treaty of alliance, which was to remain in force for twenty-five years, declared that the preservation of internal order was an obligation of Iraq, but provided that "for the permanent maintenance and protection . . . of the essential communications" of Great Britain, Iraq was to grant to the British government for the duration of the alliance sites for air bases at the port of Basrah and in the interior of the country and was to authorize the maintenance of British forces at these localities. This was to be done, however, "on the understanding that the presence of these forces shall not constitute in any manner an occupation and will in no way prejudice the sovereign rights of Iraq."<sup>59</sup> Another article provided that each of the parties undertook "not to adopt in foreign countries an attitude which is inconsistent with the alliance or might create difficulties for either party. . . ."<sup>60</sup> In addition there was an annex of seven articles which permitted the British government to maintain ground forces at a specified site for a period of five years; provided that the existing legal immunities of British forces should be continued during this period; stipulated that all necessary facilities for British forces should be accorded by the Iraqi government, at British expense; pledged the British government to grant to Iraq, at the latter's expense, naval, military and aeronautical instruction, arms and ammunition, and British officers to serve in an advisory capacity;<sup>61</sup> recorded the pledge of the Iraqi government to utilize only British military instructors and schools and to undertake that its armament should be identical in type with that used by British forces; and, finally, granted "all possible facilities" for the movement of British forces of all kinds across Iraq.

Several members of the Mandates Commission were highly critical of the military clauses of the treaty and its annex, declaring that the obvious reliance which Iraq was placing on British forces to aid in its protection and the special position which these forces were to enjoy indicated the inability of Iraq to stand alone and impaired its in-

58. The task of examining the Anglo-Iraqi agreements was specifically referred to the Mandates Commission in a Council resolution of September 4, 1931. League of Nations, *Minutes of the Sixty-fourth Session of the Council*, p. 2055.

59. Article 5.

60. Article 1.

61. In his testimony before the Mandates Commission, Sir Francis Humphrys declared that the existing British Military Mission, which would continue after the coming into force of the 1930 treaty, dealt solely with technical advice and the training of Iraqi forces. Permanent Mandates Commission, *Minutes of the Twenty-first Session*, p. 102.

dependence.<sup>62</sup> Other members of the Commission were satisfied, however, by the provision of Article 9 of the treaty that none of its terms was to prejudice the rights and obligations of either party under the League Covenant.<sup>63</sup> Exception was also taken to provisions in the annex that Iraq would utilize only British military instructors and schools, would undertake that its armament should be identical in type with that used by the British forces and would grant "all possible facilities" for the movement of British troops across Iraq. These latter provisions seemed to M. Rappard to be derogatory to Iraq's independence. He pointed out that Iraq had signed the treaty when it was obviously not independent, objected that the treaty had been entered into for a period of twenty-five years, and concluded that if Iraq would need British troops after the end of the mandate, the mandate should not be ended.<sup>64</sup>

In answer to these criticisms Sir Francis Humphrys, in examination before the Commission, pointed out that the forces to be maintained in Iraq under the treaty would be small, and declared that if it were to Iraq's interest to have an alliance with Great Britain fulfillment of the terms of the alliance must be physically possible.<sup>65</sup> Furthermore, he observed that in its original form the conditions laid down by the Commission for the determination of Iraq's independence provided that this might be secured "either by its own strength or by its alliances or by the support it may secure from the outside—in particular from the former mandatory Power."<sup>66</sup> Lord Lugard, a member of the Commission, countered the charge that the situation amounted in fact to a British protectorate over Iraq by declaring that the control of the legislature was implied in a protectorate and that Great Britain, quite clearly, did not have such control.<sup>67</sup>

#### Control of Foreign Policy

In the opinion of the chairman and several other members of the Commission the mutual undertaking in the treaty that neither power would adopt a policy in foreign countries which might create difficulties for the other was impaired by the relative position of the two countries. Marquis Theodoli feared that while Great Britain might easily watch

62. Permanent Mandates Commission, *Minutes of the Twenty-first Session*, p. 76-77; 121. Regarding Article 5, Marquis Theodoli, the chairman, declared: "The extreme limit of what could be done without infringing the independence of a State as conceived by the League Covenant had certainly been reached."

63. *Ibid.*, p. 76.

64. *Ibid.*, p. 77.

65. Sir Francis estimated that the guards at the airdromes and air bases would number about 1,250 men, all to be Iraqis but to be paid by the British government, and that the strength of the Royal Air Force to be maintained in Iraq would be "something under 2,000." (*Ibid.*, p. 122.)

66. *Ibid.*, p. 121.

67. *Ibid.*, p. 78.

Iraq's policy, the reverse would not be probable.<sup>68</sup>

In reply Sir Francis Humphrys pointed out that the object of the article in question was to prevent some future Iraqi government from pursuing a policy toward its neighbors likely to implicate Great Britain and that Iraq would not have accepted the clause had it aimed at political domination by Great Britain.<sup>69</sup> Furthermore, he continued, the clause would not bind either party if either were guilty of aggression. M. Rappard, however, remained unsatisfied and declared that an article of such tenor could not be agreed upon by two countries without the weaker losing part of its independence.<sup>70</sup>

In the end the Commission recorded the grave doubts which many of its members continued to feel regarding the compatibility of the Anglo-Iraqi treaty with Iraqi independence by adopting a resolution, embodied in its final report to the League Council and accepted by that body, which declares:

"After having carefully considered the text of these undertakings [those entered into by Iraq with Great Britain] and having heard the explanations and information on the subject from the accredited representative, the Commission came to the conclusion that, although certain of the provisions of the Treaty of Alliance of June 30, 1930, were somewhat unusual in treaties of this kind, the obligations entered into by Iraq towards Great Britain did not explicitly infringe the independence of the new State."<sup>71</sup>

#### FINANCIAL OBLIGATIONS:

##### Military Works

A financial agreement attached to the 1930 treaty of alliance set forth Iraq's financial obligations to Great Britain after termination of the mandate. These obligations concerned three principal matters: military works, railways and the port of Basrah. Provision is made for the purchase by Iraq from Great Britain of all airdromes and hangars, save those at Mosul and Hinaidi which the British are to retain for five years.<sup>72</sup> All other air base sites granted to Great Britain subsequently are to be either free of rental if on waste land, or to be leased from the owners by the Iraqi government at the expense of Great Britain if on non-government land. All are to be free from taxes, and on the expiry of the leases Iraq is to buy them from the British or permit the British government to sell them.

##### Railways

The transfer of the government railway system to Iraq, a matter on which negotia-

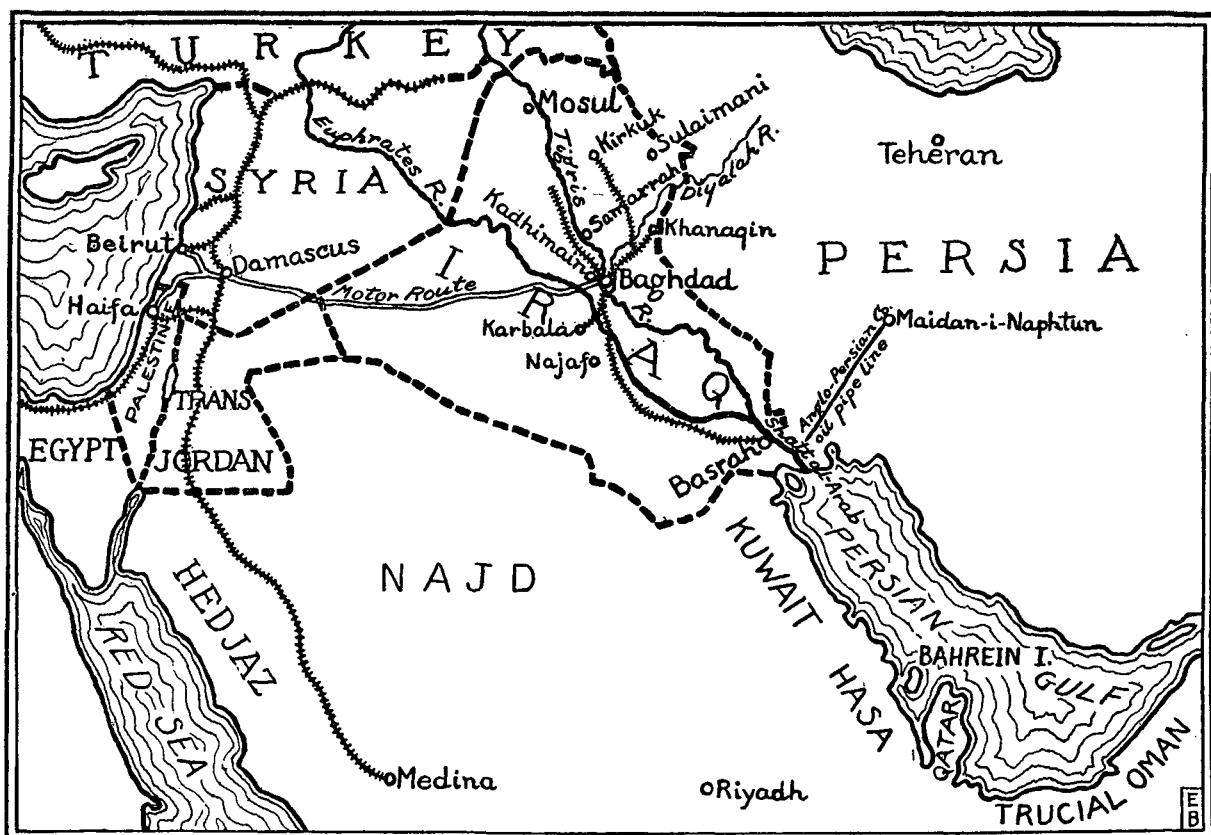
68. *Ibid.*, p. 75-76.

69. *Ibid.*, p. 120.

70. *Ibid.*, p. 121.

71. *Ibid.*, p. 225.

72. For the transferred property Iraq is to pay one-third of the cost price as certified by the British Air Ministry—a sum not yet determined—while Great Britain is to continue to pay to Iraq the existing rentals for all retained properties.



### Iraq and Its Neighbors

tion had previously been deadlocked because of disagreement regarding valuation,<sup>73</sup> is to take place within one year after termination of the mandate. Legal ownership is to be vested in Iraq with beneficial ownership entrusted to a corporation, to be constituted by statute, which is to administer and manage the railway system. Of the capital of the railway system, placed at \$20,945,525 (at par of sterling), nearly half is to be assigned to the British government.<sup>74</sup> This is to be in the form of 6 per cent preferred stock, non-cumulative for twenty years but cumulative thereafter, while the major portion of the Iraqi share is to be in deferred (or common) stock. Iraq, however, is to have 48.85 lakhs of rupees (\$1,783,025 at par) of preferred stock.<sup>75</sup> Finally, it is provided that Iraq shall have the option to buy at any time, at par, the stock allotted to the British government.

For the management of the railway system there is to be a directorate of five members, two to be named by each government, with a chairman to be selected by agreement;

at the beginning, however, the present English Director is to be chairman. At his request the Iraq government is to grant three-year contracts "on 'Treaty' terms"<sup>76</sup> to such railway officials as he shall recommend, and these contracts are not to be terminated without the consent of the British government.

The question before the League was whether this agreement imposed an unduly heavy debt burden on the new state and whether it gave the British an undue measure of control over the railway system. In examination before the Mandates Commission, Sir Francis Humphrys contrasted the total of \$10,037,500 (at par), which the British government was accepting in railway stock,<sup>77</sup> with the valuation of \$17,031,875 which they placed on the railways<sup>78</sup> and the total cost of the railways to Great Britain,

76. This provision keeps in force, in so far as these officials are concerned, the British Officials Agreement ratified in November 1924, but abrogated by the 1930 treaty of alliance. Cf. MacCallum, "Iraq and the British Treaties," cited, p. 232.

77. Permanent Mandates Commission, *Minutes of the Twenty-first Session*, p. 105. Of this sum \$9,125,000 only represented the British share of the valuation of the railways, Sir Francis declared, the balance of \$912,500 being payment by the Iraqi government for railway stores handed over to it by the British government.

78. The difference between this figure and the total capitalization of the railway at slightly over \$20,000,000 is explained by the British item for supplies (cf. foregoing footnote) and the fact that slightly more than one and three-quarters million of the Iraqi stock represents repayment for non-interest-bearing loans made to the railway by the British government.

73. Cf. MacCallum, "Iraq and the British Treaties," cited, p. 238.

74. Cf. Financial Agreement, cited; Permanent Mandates Commission, *Minutes of the Twenty-first Session*, p. 105.

75. *Ibid.* This represents the amount of non-interest-bearing loans made to the railway by Iraq. The British share of the railway stock is valued at \$10,037,500 (at par), while the valuation of Iraq's deferred stock is placed at \$9,125,000 (at par). Iraq's stock of both classes represents, therefore, \$19,908,025 (at par) while British securities are valued at \$10,037,500.

which he estimated at \$72,993,750.<sup>79</sup> The British government, he said, was receiving only half of a very low valuation on the railway properties.

To the objection of M. Rappard that the British share of railway capital was all in preferred stock and that the technical staff was "almost entirely British"—facts which he felt impaired the sovereignty of the Iraq government—Sir Francis pointed out that the Iraqi government could buy out the British holding at par at any time, and declared that the Iraqis did not have a large enough staff to run the railways at present but that a large number of students had been sent to Europe and America.<sup>80</sup>

#### The Port of Basrah

The developed port of Basrah, according to the financial agreement, is to be turned over to the Iraqi government but administered by a Port Trust to be established by a statute which shall not be amended without the consent of the British government so long

as any debt with respect to the port is owing to Great Britain. In his testimony, Sir Francis revealed that this debt had been placed at £500,000 (\$2,433,125 at par), of which approximately one-third had already been paid from port revenue.<sup>81</sup> The total amount spent on the port by the British government he placed at \$53,528,750 and the amount accepted by the British government in full payment, he pointed out, was less than one-twentieth of this sum.<sup>82</sup> In the view of several members of the Commission, particularly M. Rappard, the financial arrangement concluded by the British government was "extremely generous."<sup>83</sup>

While no provision was made in the treaty for British financial advisers in Iraq, Sir Francis, in answer to a query by the Commission, replied that there was a financial adviser and two assistants in the country whose contracts would not terminate for some years; these contracts could be ended by the Iraqi government before maturity, however, he declared.<sup>84</sup>

## CONCLUSION

The report of the Permanent Mandates Commission obliquely approving termination of the mandatory régime in Iraq, together with its recommendations of the guarantees Iraq should be required to give the League, was submitted to the League Council at its sixty-sixth session, in January 1932.<sup>85</sup> The Council approved the termination of the mandatory régime subject to Iraq's acceptance of a formal declaration of guarantees and on condition that the end of this régime "should become effective only as from the date on which Iraq has been admitted to the League of Nations."<sup>86</sup>

The requirement that Iraq become a member of the League was opposed by the League's *rapporteur* on mandates questions, who argued that the Council should restrict its action to recognizing the independence of the new state and should leave the ques-

tion of League membership to the Assembly.<sup>87</sup> The purpose of the Mandates Commission in recommending that Iraq be required to join the League was to assist the new state in maintaining its territorial integrity and political independence.<sup>88</sup> Furthermore, the Mandates Commission considered that the Council resolution of December 1925,<sup>89</sup> accepting the Mosul settlement on condition that the mandatory régime continue for twenty-five years unless Iraq earlier became a League member, made it legally necessary for termination of the mandate and admission of Iraq to the League to coincide.

On July 12 the Iraqi government requested the Secretary-General of the League to place its application for League membership on the agenda of the September Assembly.<sup>90</sup> Simultaneously it submitted a memorandum stating that its ratification of the declaration of guarantees insured its fulfillment of all international engagements, pointing out that it was a signatory of the Pact of Paris, and pledging that "as soon as possible" it would accede to the Convention of June 17, 1925 relating to the supervision of the international trade in arms, ammunition and implements of war. These final statements were apparently designed to meet the conditions which the Assembly would raise in accordance with Article I of the Covenant, which governs election to League membership.

79. Permanent Mandates Commission, *Minutes of the Twenty-first Session*, p. 105.

80. *Ibid.*, p. 122.

81. *Ibid.*, p. 104. In addition, he declared, there was a private loan debt of equal amount incurred by the port for necessary dredging operations.

82. The only additional external debt for which Iraq is responsible is a small sum still owing as its share of the Ottoman public debt. In 1927 the Iraqi government liquidated £1,228,000 of its share of this debt by the purchase of Ottoman debt securities. The remaining sum due of £383,000 (\$1,863,793 at par) was made payable in seven annual annuities, four of which have been paid. (*Ibid.*, p. 95.)

83. *Ibid.*, p. 104.

84. *Ibid.*, p. 103, 105.

85. For the report of the Commission, cf. Permanent Mandates Commission, *Minutes of the Twenty-first Session*, p. 221-225.

86. League of Nations, *Minutes of the Sixty-sixth Session of the Council*, p. 474. Following acceptance by the Council at its May session of the draft declaration drawn up by a special Council committee (*idem, Minutes of the Sixty-seventh Session of the Council*, p. 1213), Iraq quickly ratified the declaration. (League document C.L.106.1932.VI.). For a discussion of the guarantees, cf. p. 188-191.

87. League of Nations, *Minutes of the Sixty-sixth Session of the Council*, p. 474-5.

88. Cf. p. 188; 192.

89. League of Nations, *Minutes of the Thirty-seventh Session of the Council*, Resolution of December 16, 1925, p. 191-2.

90. League document A.17.1932.VII.